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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,622

08/03/2006

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J3715(C)

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201 7590 12/15/2008
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EXAMINER

YU, GINA C

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

12/15/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/550,622	IVANOVA ET AL.	
	Examiner	Art Unit	
	GINA C. YU	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on September 17, 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8,10,11,13 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 8, 10, 11, 13, 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 17, 2008 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not in this action can be found in a prior Office action.

Claims 1, 3-5, 7, 8, 10, 11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clapp (US 6887859).

Clapp teaches topical liquid compositions comprising Bio-PSA, 40 % silicone pressure sensitive adhesive in isododecane for absorbing moisture and fluid absorbing. See Tables 3 and 5; instant claims 1, 4, 5, 10. Clapp suggests formulating the compositions into aerosol foams (mousse), which necessarily contains propellants, and to use the produce either a leave-on or rinse-off product. See col. 3, lines 49 – 67. See instant claims 7, 8. The use of the prior art invention for hair care is also taught therein. Addition of hair conditioning agent, such as emollient, and surfactants are also taught. See col. 11, lines 54 – 65; instant claim 1. Since the final composition of the silicone-

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PSA/isododecane solvent is made in the form of aqueous dispersion, there seems to be no distinction in the final prior art product and the instant invention.

While Clapp does not disclose a specific mousse formulation, the reference teaches and suggests aerosol foam comprising silicone PSA emulsion. Thus it would have been obvious to one of ordinary skill in the art at the time of the present invention to make mousse with improved fluid absorbing properties.

For the purposes of searching for and applying prior art under 35 U.S.C. 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See MPEP § 2111.03.

Claims 1, 3-5, 10, 11, 13, 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dhamdhere et al. (US 6787130 B2) in view of Tongerson (US 6165455).

Dhamdhere teaches an aqueous hair treatment composition comprising at least one silicone PSA and at least one material selecting from a hair conditioning agent, a hair cleansing agent, and an agent for hair care suspension. See abstract. The reference teaches that silicone PSA emulsion is prepared by emulsifying the silicone with a volatile silicone fluid in water using one or more emulsifiers. See col. 4, line 64 – col. 5, line 10. Table 1, Examples 2-4 discloses compositions comprising DC 5-7300 (40 % silicone PSA emulsion), fatty alcohols and silicone fluids (hair conditioning agents). See instant claims 1-5, 9, 10. The reference teaches that the composition is used as a hair styling aid. See instant claim 11. The reference teaches that the use of

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PSA in the composition renders styling benefits without sticky feel. See col. 2, lines 54 – 61. See instant claims 11 and 13.

While Dhamdhere does not specifically teach to formulate a mousse comprising at least one silicone PSA, the reference indicates that hair styling mousse is well known in hair care art.

Tongerson teaches hair styling mousse comprising hair styling polymers, including silicone copolymers, is well known in hair cosmetic art. A general formulation of a mousse is disclosed in Example 14, rendering the components of instant claim 15 obvious.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Dhamdhere and make mousse containing silicone PSA emulsion as motivated by Tongerson because the reference teaches that it is known in hair care art to use hair styling polymer to make hair styling mousse. While Dhamdhere teaches that the specific conditioning and styling agent (silicone PSA emulsion) are compatible with the shampoo ingredient, there is nothing in the reference that would have deterred a skilled artisan from making a hair styling mousse. The skilled artisan would have had a reasonable expectation of successfully producing a hair styling mousse which provides styling benefits without sticky feel.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-5, 7, 8, 10, 11, 13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of copending Application No. 10/550623.

Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions comprising a silicone pressure sensitive adhesive wherein the pressure sensitive adhesive is in the form of an emulsion. The limitations of the dependent claims also overlap.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1, 3-5, 7, 8, 10, 11, 13, 15-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Pat. No. Dhamdhere et al. (US 6787130 B2) in view of Torgerson et al. (US 6165455 A).

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Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims are directed to compositions comprising a silicone pressure sensitive adhesive wherein the pressure sensitive adhesive is in the form of an emulsion. The limitations of the dependent claims also overlap.

Dhamdhere does not claim a mousse comprising at least one silicone PSA.

Torgerson teaches hair styling mousse comprising hair styling polymers, including silicone copolymers, is well known in hair cosmetic art.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Dhamdhere and make mousse containing silicone PSA emulsion as motivated by Torgerson because the reference teaches that it is known in hair care art to use hair styling polymer to make hair styling mousse.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-5, 8, 10, 11, 13, 15-17 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 9:00AM until 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/

Primary Patent Examiner, Art Unit 1611